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8 UNITED STATES DISTRICT COURT  
9 FOR THE EASTERN DISTRICT OF CALIFORNIA  
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11 AKIVA AVIKAIDA ISRAEL,

12 Plaintiff,

13 v.

14 RABBIT SHMARY, et al.,

15 Defendants.  
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No. 2:21-cv-0262-EFB P

ORDER AND FINDINGS AND  
RECOMMENDATIONS

17 Plaintiff, a state prisoner proceeding pro se with this civil rights action under 42 U.S.C.  
18 § 1983, moves for a preliminary injunction. ECF No. 13. Plaintiff claims that prison officials at  
19 Mule Creek State Prison are interfering with her access to the courts by refusing to sign or date  
20 the certificates of service accompanying her outgoing mail to the courts.<sup>1</sup> *Id.* at 1. She alleges  
21 that this “could cause an injury that can never be fixed . . . .” *Id.* For the reasons that follow,  
22 plaintiff’s request must be denied.

23 A preliminary injunction will not issue unless necessary to prevent threatened injury that  
24 would impair the court’s ability to grant effective relief in a pending action. *Sierra On-Line, Inc.*  
25 *v. Phoenix Software, Inc.*, 739 F.2d 1415, 1422 (9th Cir. 1984); *Gon v. First State Ins. Co.*, 871  
26 F.2d 863 (9th Cir. 1989). A preliminary injunction represents the exercise of a far reaching

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28 <sup>1</sup> Plaintiff identifies herself by the pronouns “she” and “her.” ECF No. 13. The Court will  
do the same.

1 power not to be indulged except in a case clearly warranting it. *Dymo Indus. v. Tapeprinter, Inc.*,  
2 326 F.2d 141, 143 (9th Cir. 1964). To be entitled to preliminary injunctive relief, a party must  
3 demonstrate “that [s]he is likely to succeed on the merits, that [s]he is likely to suffer irreparable  
4 harm in the absence of preliminary relief, that the balance of equities tips in his favor, and that an  
5 injunction is in the public interest.” *Stormans, Inc. v. Selecky*, 586 F.3d 1109, 1127 (9th Cir.  
6 2009) (citing *Winter v. Natural Res. Def. Council, Inc.*, 555 U.S. 7 (2008)). The U.S. Court of  
7 Appeals for the Ninth Circuit has also held that the “sliding scale” approach it applies to  
8 preliminary injunctions—that is, balancing the elements of the preliminary injunction test, so that  
9 a stronger showing of one element may offset a weaker showing of another—survives *Winter* and  
10 continues to be valid. *Alliance for the Wild Rockies v. Cottrell*, 622 F.3d 1045, 1050 (9th Cir.  
11 2010). “In other words, ‘serious questions going to the merits,’ and a hardship balance that tips  
12 sharply toward the plaintiff can support issuance of an injunction, assuming the other two  
13 elements of the *Winter* test are also met.” *Id.* In cases brought by prisoners involving conditions  
14 of confinement, any preliminary injunction “must be narrowly drawn, extend no further than  
15 necessary to correct the harm the court finds requires preliminary relief, and be the least intrusive  
16 means necessary to correct the harm.” 18 U.S.C. § 3626(a)(2).

17 Plaintiff fails to meet that standard. This action alleges violations of plaintiff’s right to  
18 freedom of religion (*see* ECF Nos. 1, 7), not her legal mail or access to the courts. Because  
19 plaintiff’s motion addresses conduct that is not the subject of this action, it does not demonstrate  
20 either a likelihood of success or a serious question going to the merits of her complaint. Also  
21 significant is that plaintiff’s purported injury is entirely speculative. *See* ECF No. 13 at 1  
22 (alleging that mailroom misconduct “could” cause irreparable injury). In the event plaintiff does  
23 suffer an injury, her recourse is to first pursue her administrative remedies at Mule Creek and  
24 once those remedies are exhausted, to commence a separate civil rights action. *See McKinney v.*  
25 *Carey*, 311 F.3d 1198, 1199-1201 (9th Cir. 2002) (per curiam) and *Rhodes v. Robinson*, 621 F.3d  
26 1002, 1004-07 (9th Cir. 2010) (together holding that claims must be exhausted prior to the filing  
27 of the original or supplemental complaint).

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1 For these reasons, plaintiff's motion for a preliminary injunction (ECF No. 13) must be  
2 denied.

3 Accordingly, it is ORDERED that the Clerk of the Court randomly assign a United States  
4 District Judge to this case.

5 Further, it is RECOMMENDED that plaintiff's motion for a preliminary injunction (ECF  
6 No. 14) be denied.

7 These findings and recommendations are submitted to the United States District Judge  
8 assigned to the case, pursuant to the provisions of 28 U.S.C. § 636(b)(1). Within fourteen days  
9 after being served with these findings and recommendations, any party may file written  
10 objections with the court and serve a copy on all parties. Such a document should be captioned  
11 "Objections to Magistrate Judge's Findings and Recommendations." Failure to file objections  
12 within the specified time may waive the right to appeal the District Court's order. *Turner v.*  
13 *Duncan*, 158 F.3d 449, 455 (9th Cir. 1998); *Martinez v. Ylst*, 951 F.2d 1153 (9th Cir. 1991).

14 DATED: May 12, 2021.

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16 EDMUND F. BRENNAN  
17 UNITED STATES MAGISTRATE JUDGE  
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